

HOWARD F. HOUSER

IBLA 81-783

Decided August 6, 1981

Appeal from decision of California State Office, Bureau of Land Management, declaring unpatented mining claim abandoned and void. CA MC 34096.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

APPEARANCES: Howard F. Houser, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Howard F. Houser appeals from the May 27, 1981, decision of the California State Office, Bureau of Land Management (BLM), which declared the unpatented Howard F. Houser placer mining claim, CA MC 34096, abandoned and void because evidence of assessment work or notice of intent to hold the mining claim had not been filed with BLM prior to December 31, 1980, as required by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and the regulation 43 CFR 3833.2-1.

Appellant states he is of the opinion that he did file a proof of labor with BLM in 1980, and recites certain details relative to agreements with Pacific Gas & Electric Company and Union Oil Company

of California concerning use of the surface of the mining claim and access to the claim. The record contains no evidence that the proof of labor for the claim was ever filed.

He asserts that on June 23, 1981, he had made a new location of the claim and had recorded same in the records of Sonoma County, California, in Book 2085 at page 921. The record does not reflect recordation of this new location of the claim with BLM as required by FLPMA.

[1] The above-cited statute and regulation impose a conclusive presumption of mining claim abandonment for any failure to file the required instruments in the proper BLM office by the date on which they are due. This Board has no authority to excuse lack of compliance with the statute or to afford relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981). BLM has properly declared the claim, as recorded originally with BLM, abandoned and void.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Anne Poindexter Lewis
Administrative Judge

